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Acting Director

County of Los Angeles
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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June 15, 2011

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To: Supervisor Michael D. Antonovich, Mayor
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

From: Jackie Contreras, Ph.D.
Acting Director

NOTICE TO COMMENCE A SOLICITATION FOR EMERGENCY SHELTER CARE SERVICES AND SELECT CONTRACTORS WITHOUT USE OF THE INFORMED AVERAGING METHOD

This is to inform your Board that the Department of Children and Family Services (DCFS) intends to commence a Request for Statement of Qualifications (RFSQ) for Emergency Shelter Care (ESC) services and select contractors without the use of the Informed Averaging method. The RFSQ is tentatively scheduled to be released in August 2011.

On March 31, 2009, the Los Angeles County Board of Supervisors adopted the Chief Executive Officer's recommendation to utilize the "Informed Averaging" scoring methodology as the County standard for scoring and evaluating for competitive solicitations, such as Request for Proposals (RFP) and RFSQ. Moreover, the recommendation affirmed that in the event that a department believes the Informed Averaging methodology is ineffective or inappropriate, the department must provide written notice to the Board, with a copy to the CEO, at least two weeks prior to commencing with the intended solicitation.

DCFS believes use of the Informed Averaging method for the ESC RFSQ is not applicable, based on the following:

- The key deliverable of the ESC contract is the availability of beds;
- Potential contractors must meet the minimum requirements of the RFSQ; and
- Potential contractors will be reviewed and selected on a pass or fail basis for responsiveness and responsibility requirements, and a home-study evaluation.

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The RFSQ seeks licensed and qualified foster parents to provide temporary, emergency shelter to children under the care of DCFS. This service is for children in need of immediate shelter, and will provide a home with the contracted licensed foster parents up to 14 days. Contracted licensed foster parents are required to have the contracted number of beds available on a 24-hour, 7 days per week basis, for placements. The total annual contract budget is \$400,000 and the expected term of the new contract is from October 1, 2012 through September 30, 2017, for five one-year periods.

If you have any questions or require additional information, please contact me or your staff may contact Aldo Marin, Board Liaison, at (213) 351-5530.

JC:CMM:AM
CC:mw/bm

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

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500 West Temple Street, Room 713, Los Angeles, California 90012
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ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

March 17, 2009

55

MARCH 31, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

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EXECUTIVE OFFICER

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Dear Supervisors:

APPROVAL OF NEW AND REVISED CONTRACTING POLICIES AND PRACTICES (ALL DISTRICTS - 3 VOTES)

SUBJECT

This letter recommends approval of the "Informed Averaging" scoring methodology as the County standard for scoring and evaluating certain competitive solicitations, such as Request for Proposals (RFPs) and Request for Statement of Qualifications (RFSQs). This letter also recommends approval of the revised Services Contract Solicitation Protest Policy to reflect a change in when certain related documents are made available to the public. In addition, this letter proposes a revised practice regarding release of the Proposition A contract cost analysis, and a revised practice for reviewing updated departmental Proposition A contract amendments.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve the Evaluation Methodology for Proposals Policy (Attachment I), establishing Informed Averaging as the County of Los Angeles evaluation methodology for competitive solicitations (e.g., RFPs and RFSQs) where proposals are evaluated and scored by a panel based on several factors, such as qualifications, experience, work plan, and price, effective 60 days after Board approval, and instruct the Chief Executive Officer (CEO), with the assistance of the Auditor-Controller, the Director of Internal Services, and County Counsel, to issue implementation guidelines to departments within 60 days.
2. Approve the revised Services Contract Solicitation Protest Policy (Attachment II) to specify when a recommended proposer's proposal and corresponding evaluation documents in a solicitation are made available upon request to the public, with the

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revised policy to be effective 60 days after Board approval. Also, instruct the CEO, with the assistance of the Auditor-Controller, the Director of Internal Services, and County Counsel, to issue implementation guidelines to departments within 60 days.

3. Direct the Auditor-Controller to update the County Fiscal Manual to: a) specify when the Proposition A contract cost analysis becomes a public document in a solicitation, and b) specify when an updated departmental Proposition A cost analysis is reviewed for Proposition A contracts amendments.
4. Direct the Director of Internal Services to update the Services Contract Manual to: a) include the Evaluation Methodology for Proposals, b) reflect the revised Services Contract Solicitation Protest Policy, c) specify when the Proposition A contract cost analysis becomes a public document in a solicitation, and d) specify when an updated departmental Proposition A cost analysis is reviewed for Proposition A contracts amendments.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On November 25, 2008, your Board:

1. Directed the CEO and all County departments that henceforward it shall be County policy in all contracting matters that:
 - There will be no discarding, shredding or other destruction of scoring sheets, notes, documents, or any other evaluation materials created and utilized to form the basis for recommendations in a competitive bidding process. The County shall retain these materials for review and inspection, as necessary, for RFPs currently in progress that do not make reference to a scoring process;
 - The use of consensus-only scoring shall be immediately suspended for all future solicitations, as well as for all solicitations currently in progress that do not make reference to a scoring process and for which the evaluation is not already in process, until the Board of Supervisors directs otherwise; and
 - In the event a department makes substantive changes to the Statement of Work and/or dollar amounts identified in the RFP, a new Proposition A analysis shall be conducted;
2. Instructed the Director of Internal Services, County Counsel, and Auditor-Controller (Auditor) to:
 - Jointly undertake a comprehensive review of contracting policies and practices in other jurisdictions, giving particular attention to the relative merits of the consensus vs. averaging scoring method; and

- Return to the Board within 60 days with findings and recommendations to develop a new, consistent, and uniformly applied contracting policy for the County to adopt as the "best practice," provided that such policy incorporates provisions permanently prohibiting the destruction, and requiring the retention, of all scoring and evaluation materials;
3. Instructed County Counsel to report back to the Board in 60 days on:
- Whether or not the Proposition A analysis can be released once the RFP closes; and
 - Recommendations on establishing guidelines for an additional review of Proposition A contracts when departments are making substantive amendments, asking for additional compensation or expanding the scope of the work; and
4. Instructed the CEO to report back in one week on how many RFPs were issued prior to November 21, 2008 that reference a scoring process, including the number and purpose.

On December 2, 2008, on motion of Supervisor Knabe, your Board instructed the CEO, in conjunction with the Director of Internal Services, County Counsel, and other affected departments, to review Board Policy No. 5.055 - Services Contract Solicitation Protest (Protest Policy) and make recommendations for changes to the Protest Policy, including: (1) consideration of applying the Protest Policy to all service contract solicitations, including solicitation for franchise agreements, and (2) consideration of allowing the public time to review all proposals and for filing of protests prior to the contract recommendation being presented to your Board.

With regard to the November 25, 2008 Board order, memoranda to your Board from the CEO of December 10, 2008, January 14, 2009, and February 2, 2009 have addressed items 1 and 4 above.

In response to your Board's remaining referenced instructions from November 25, 2008 and December 2, 2008, this Office along with the aforementioned departments, convened a workgroup to conduct appropriate research and analysis and develop resulting recommendations. As further discussed below and detailed in the attachments to this Board letter, we have developed recommendations pertaining to:

- A Board policy establishing a uniform County methodology for evaluating competitive solicitations where proposals are evaluated and scored by a panel based on several factors, such as, qualifications, experience, work plan and price, e.g., RFPs and RFSQs;
- A revision to the Services Contract Solicitation Protest Policy establishing the stage at which a recommended proposer's proposal and corresponding evaluation documents are made available to the public; and

- Established practices regarding the stage at which Proposition A contract cost analyses are made available to the public, and the criteria for Auditor's review of updated departmental Proposition A contracts amendments.

Implementation of Strategic Plan Goals

The recommended Board actions are consistent with the Strategic Plan Goal of Operational Effectiveness as they will maximize effectiveness in the County's processes in the delivery of timely customer service.

FISCAL IMPACT/FINANCING

There is no direct fiscal impact related to these recommendations. However, as further discussed below and in the attachments, the recommended Board actions may result in increased workload and associated resource constraints, both within the departments conducting solicitations and the departments coordinating, staffing, and advising County Review Panels. Also, as further discussed below and in the attachments, some actions may impact the County's ability to negotiate the most favorable contract terms.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Evaluation Scoring Methodology

Attachment III provides the "Report on Best Practices for Evaluation Scoring Methodology in Requests for Proposals and Requests for Statements of Qualifications and Document Retention." As detailed in the report:

- The Best Practices survey did not identify a single best practice employed by the other jurisdictions surveyed and found that many other jurisdictions employ different evaluation methodologies at the discretion of the contracting department;
- While the consensus scoring methodology offers the benefit of a group discussion that can address errors, misunderstandings, or inexperience among evaluators, it can mask the individual, unique perspectives of evaluators; and
- While the averaging scoring methodology provides the benefit of independence and mathematical objectivity, very high or low scores by different individual evaluators can skew overall results.

Based on the above, we are recommending your Board approve the policy described in Attachment I, which establishes "Informed Averaging" as the uniform County methodology for competitive solicitations, where proposals are evaluated and scored by a panel based on several factors, such as, qualifications, experience, work plan and price, e.g. RFPs and RFSQs. Informed Averaging is a hybrid of the consensus scoring method and averaging scoring method. Under this methodology, evaluators score proposals individually, then meet as a group to discuss. Following the group discussion, evaluators individually determine if they wish to change any scoring based on the discussion (documenting the basis for any changes on their

individual evaluation worksheet). The individual scores are then compiled onto a final evaluation worksheet and averaged. This approach preserves the virtues of the averaging scoring methodology, such as independence and autonomy, as well as the value of group discussions where errors, misunderstandings, or lack of proposal evaluation experience can be addressed. This process is described in more detail in Attachment III.

Please note that we are also recommending an exemption to the Informed Averaging method in the event a department believes the methodology is ineffective or inappropriate for a specific solicitation or the department is mandated by their funding sources to utilize an alternative scoring method. In either scenario, the department must provide written notice to your Board, with a copy to the CEO, at least two weeks prior to commencing with the intended solicitation, referencing the specifics of the proposed methodology.

Also, as part of the Informed Averaging method, departments shall retain both the individual evaluation worksheets and the final evaluation worksheet signed by each evaluator consistent with the Countywide Record Retention Schedule (when approved by your Board) for contracts.

Revised Services Contract Solicitation Protest Policy

Attachment IV is the "Report on the Revised Services Contract Solicitation Protest Policy." The Protest Policy provides an avenue for bidders and proposers with respect to Board-approved services contracts to request review of: (1) a department's solicitation requirements, (2) a department's disqualification of a proposer, and (3) a department's proposed contractor selection. Your Board's December 2, 2008 order concerns the third category of review, namely the department's proposed contractor selection. Currently, at the proposed contractor selection level of review, the non-selected proposer's arguments are limited to arguments with respect to its proposal and the recommended proposer's proposal is not considered.

Under the current practice, proposals and corresponding evaluation documents are available for release in response to California Public Records Act requests when the department's recommendation for contract award appears on your Board's printed agenda (i.e., 2:00 p.m., the Wednesday prior to the Board meeting at which the recommendation for contract award will be considered). This practice is supported by the California Supreme Court's decision in *Michaelis, Montanari & Johnson v. Superior Court*, (2006) 38 Cal.4th 1065, in recognizing that delaying the point at which proposals and corresponding evaluation documents are made public protects the public interest in negotiating the most favorable contract for the County and its taxpayers.

In response to your Board's directive, we have developed a revised structure pertaining to release of proposals and the corresponding evaluation documents in solicitations. Specifically, we are recommending that, absent extraordinary circumstances, the recommended proposers' proposal and corresponding evaluation documents be made available to the public at the

Proposed Contractor Selection Review stage (and subsequent County Review Panel stage), after the contracting department has completed contract negotiations and has obtained a letter from an authorized officer of the recommended proposer that the negotiated contract is a firm offer of the recommended proposer, which shall not be revoked by the recommended proposer pending the department's completion of the Protest Policy process and Board approval. This process is discussed in greater detail in Attachment IV.

Please note that, while your Board's December 2, 2008 motion requests recommendations regarding release of all proposals in time for review during the Protest Policy process, our recommendation is to limit release to the recommended proposer's proposal. We believe limiting the release in this fashion will provide a non-selected proposer with sufficient information to make its claims under the Protest Policy, as it provides the appropriate benchmark (i.e., the recommended proposer's proposal) to demonstrate that, but for the error, the non-selected proposer should have been rated the lowest cost, responsive and responsible bidder, or ranked the highest rated proposer. To release any more information at this stage would exacerbate some of the identified risks of the proposed revised structure (identified and discussed in Attachment IV), with little added benefit to non-selected proposers.

Proposition A Cost Analysis

Attachment V is the "Report on Proposition A Cost Analysis and Guidelines." Chapter 2.121 of the County Code, or "Proposition A," permits the County to contract out for services that are or could be performed by County employees, and do not fall within one of the enumerated exceptions to Proposition A, if contracting out for the services is more economical or, in the case of physician services, more feasible. In order to determine whether contracting out for services is more economical, a department prepares a Proposition A cost analysis. A more detailed discussion of the cost analysis process is provided in Attachment V.

We currently treat the Proposition A cost analysis just as the proposals and corresponding evaluation documents are treated for purposes of determining when the cost analysis must be released under the California Public Records Act. Accordingly, under current practice, the Proposition A cost analysis is available for release in response to California Public Records Act requests when contract negotiations are complete and the department's recommendation for contract award appears on your Board's printed agenda (i.e., 2:00 p.m., the Wednesday prior to the Board meeting at which the recommendation for contract award will be considered).

With respect to the Proposition A cost analysis specifically, the business rationale for withholding it from release until the date identified above is that it sets forth in great detail what it would cost the County to provide subject services in-house. Making this information available to the vendor community prior to completing contract negotiations may impair the County's ability to negotiate the best price for the subject services. We recognize that releasing the study at this point may serve the public interest in providing a greater amount of time for the public to review

the analysis and raise concerns with it. However, there is an inherent risk that, as solicitations are cancelled and reinitiated, putting the study in the hands of the vendor community at this early stage risks that vendors will have the opportunity to structure their bids to limit the County's ability to obtain the best price for the subject services.

Another date mitigates this risk, while still serving the public interest of providing additional time to review the Proposition A cost analysis and raise concerns with it. The date is the same point in time we are recommending that the recommended proposer's proposal and corresponding evaluation documents be released, should your Board determine to adopt the revised Protest Policy (Attachment II). Therefore, absent extraordinary circumstances, we are recommending release of the Proposition A cost analysis after the department has selected a recommended contractor, completed contract negotiations, and obtained a letter from an authorized officer of the recommended contractor that the negotiated contract is a firm offer of the recommended contractor, which shall not be revoked by the recommended contractor pending the department's completion of the review process under the Protest Policy and Board approval.

Proposition A Guidelines

Attachment V also includes a detailed discussion on the Auditor's review of Proposition A cost analyses, including when contracts are amended to expand the scope of work. From the approval of Proposition A in 1978 to approximately 1997, the Auditor reviewed all Proposition A cost analyses. Over time, departments have become more adept at preparing them. Thus, in 1997, the Auditor limited its review to contracts with an estimated annual contract cost of \$1 million or more. In response to recent Board concern over contract amendments that increased the contract cost to \$1 million or more a year without additional review of the Proposition A cost analysis, the Audit Committee approved the policy outlined above to ensure reviews of cost analyses for amendments that increased the annual contract cost to \$1 million or more. Based upon information provided by the Office of Affirmative Action Compliance to the Auditor, this action will result in the Auditor's review of approximately 18 percent of all Proposition A contracts, which constitute approximately 79 percent of the total dollar amount of Proposition A contracts.

Based on our analysis, we recommend the following revision:

If the Auditor previously reviewed the Proposition A cost analysis for a specific contract (either because annual cost under the original contract was \$1 million or more, or because an amendment increased the annual contract cost to that level), the Auditor shall review the department's updated Study and Comparison for any amendment that will increase the aggregate contract cost by more than 10 percent, but not less than \$500,000.

The Honorable Board of Supervisors
March 17, 2009
Page 8

In addition, the Auditor will: (1) review a sample of Proposition A contracts with an annual contract cost of less than \$1 million to ensure that departments are completing the Proposition A cost analyses properly, and (2) continue to review Proposition A cost analyses for contracts, contract renewals and contract amendments under \$1 million a year when requested by your Board or by the department.

These practices and guidelines are discussed in greater detail in Attachment V.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The proposed recommendations will provide County departments with clear and consistent practices relating to proposal evaluations, Protest Policy procedures, and procedures for sharing Proposition A cost analyses and conducting updated Proposition A contracts amendments.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:ES:MKZ
FC:VLA:pg

Attachments (5)

c: All Department Heads